

1:05 FILED O'Clock f.M.

MAY - 9 2011

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

SANDRA K. MARKHAM, Clerk
By: Rita Storms

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: May 9, 2011

TITLE:	COUNSEL:
STATE OF ARIZONA	Sheila Sullivan Polk Yavapai County Attorney Bill Hughes, Esq. Deputy Yavapai County Attorneys
(Plaintiff)	(For Plaintiff)

vs.

JAMES ARTHUR RAY

Thomas K. Kelly, Esq.
425 E. Gurley
Prescott, AZ 86301

Luis Li, Esq.
Brad Brian, Esq.
Truc Do, Attorney at Law
Miriam Seifter, Attorney at Law
MUNGER TOLLES & OLSON LLP
355 S. Grand Avenue, 35th Fl.
Los Angeles, CA 90071

(Defendant)	(For Defendant)
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RULINGS ON PENDING MATTERS

As the Court has observed repeatedly, this case has taken on the unusual characteristic of extensive ongoing litigation involving disclosure, investigation, and other issues. Some of the pending matters are addressed as follows:

(A) Defendant's Request for Case Management Rulings; Motion to Preclude Inadmissible Evidence filed March 14, 2011; Response filed March 25, 2011.

The Court believes that these matters have been addressed during the course of the trial and will issue no further rulings on these matters unless specific issues are presented to the Court.

(B) Defendant's Bench Memorandum Regarding Prosecutorial Misconduct filed April 6, 2011; Response dated April 11, 2011.

The memorandum filed on April 6 does not contain a request for a mistrial. In addition to the memorandum, however, the defense has moved for mistrial during trial.

The State has, on occasion, asked leading questions during direct examination and has asked questions that resulted in responses containing inadmissible hearsay. Perhaps the most significant example of the latter type of question involved Mr. Hamilton's recounting of Mrs. Hamilton's report of her observation of the 2009 sweat lodge ceremony – "he did it again." The questions and any inappropriate responses, however, have been properly dealt with through the objection and stricken testimony procedure. The Court concludes that a mistrial is not warranted.

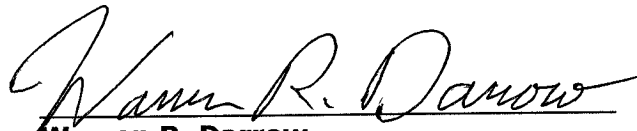
(C) Defendant's Motion for Sanctions Pursuant to Rule 15.7 Based on Violation of *Brady v. Maryland* filed April 20, 2011; Defendant's (1) Motion to Exclude Testimony of Richard Haddow and (2) Renewed Motion for Sanctions Pursuant to Rule 15.7 Based on Violation of *Brady v. Maryland* filed April 25; State's Response to all three motions dated May 2, 2011; pending oral motion for mistrial currently under advisement.

The Court concludes that preclusion of Richard Haddow as a State's witness is an appropriate and necessary sanction for the *Brady* violation. Under the circumstances presented in this case, the State cannot withhold or fail to disclose information that is plainly subject to mandatory disclosure requirements under both constitutional principles and the rules of procedure and then selectively use related potentially inculpatory information to its benefit at trial. The *Brady* violation, which this Court has determined can be remedied short of mistrial, however, does not allow the Defendant to present information in the Haddow report in a manner contrary to the rules of evidence. The motion to preclude Mr. Haddow as a State's witness is granted.

The Court concludes that the other sanctions urged by the Defendant are not warranted. The Defendant apparently has chosen not to call Mr. Haddow as his own witness for purposes of presenting any exculpatory information contained in the report and does not wish to obtain another expert witness to address any issue involving sweat lodge construction. Furthermore, as has been noted in court, in a motion pleading regarding the *Brady* violation, and in argument by counsel, issues concerning the potential significance of carbon dioxide and of the location of participants in the sweat lodge have been known to the parties for months prior to the commencement of trial. The request for further sanctions is denied at this time.

Finally, for the reasons discussed above in connection with the request for further sanctions, the pending oral motion for mistrial is denied.

DATED this 9th day of May, 2011.


Warren R. Darrow
Superior Court Judge

cc: Victim Services Division